

# Frost Brown Todd

ATTORNEYS  
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August 23, 2004

**VIA FACSIMILE**

Robert W. Cinque, Esq.  
Cinque & Cinque, P.C.  
845 Third Avenue  
New York, NY 10022

**VIA FACSIMILE**

R. Gary Winters, Esq.  
McCaslin, Imbus & McCaslin  
900 Provident Bank Building  
632 Vine Street  
Cincinnati, OH 45202-2442

Re: *The Kroger Company v. Malease Foods Corp.*  
Southern District of Ohio Court Case No.: C-1-02-439

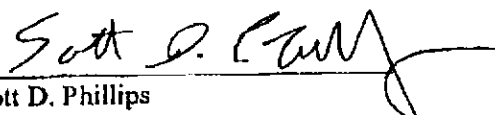
Dear Bob and Gary:

Following up Judge Beckwith's Order regarding Summary Judgment in the above-referenced case, I would like to schedule the closing on the three properties subject to the purchase options as soon as possible. The Kroger Company would like a closing date of October 1, 2004 and cooperation with updating the title information, should such cooperation become necessary.

With respect to funds that would have been due to Mr. Kadish at the closing had he conveyed the property on time in April 2003, Kroger will deposit those funds in escrow with the Clerk of Court for the Southern District of Ohio pending the outcome of the damages trial, which has yet to be set.

Please acknowledge your acceptance of this schedule for the closing no later than August 30, 2004. Call or write if you have any questions.

Sincerely,

  
Scott D. Phillips

SDP:vlo

cc: Douglas R. Dennis, Esq.  
W. Russell Wilson, Esq.  
Paul Parnelle, Esq. (via hand delivery)

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EXHIBIT 